



30 SEP 2003

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In re Application of :
HIRATSUKA et al. :
Application No.: 09/674,279 : DECISION
PCT No.: PCT/JP99/04984 :
Int. Filing Date: 13 September 1999 :
Priority Date: None :
Attorney Docket No.: 198167US :
For: ELECTRIC DOUBLE LAYER CAPACITOR :

This decision is in response to applicants' "RENEWED PETITION UNDER 37 CFR 1.181 AND CONDITIONAL PETITION FOR UNINTENTIONAL ABANDONMENT UNDER 37 CFR 1.137(b)" filed 28 July 2003.

BACKGROUND

On 13 September 1999, applicant filed international application PCT/JP99/04984, which designated the United States. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 22 March 2001. The twenty-month period for paying the basic national fee in the United States expired at midnight on 13 March 2001.

On 30 October 2000, applicant filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee and a translation of the international application into English.

On 04 December 2000, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) and the surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty months from the earliest priority date were required.

On 27 June 2001, applicants submitted a "REQUEST FOR ISSUANCE OF NOTICE OF ACCEPTANCE" requesting a 371(c) date of 30 October 2000. This request was accompanied by a copy of a date-stamped postcard receipt.

On 18 July 2001, a submission was filed including a Transmittal Letter, a declaration of an

inventor, a Power of Attorney, and the surcharge under 37 CFR 1.492(e). The Transmittal Letter, the declaration, and the Power of Attorney all indicate the application number as 09/647,279. The submission was inadvertently placed in the above-identified application.

On 26 December 2001, the DO/EO/US, apparently relying on the 18 July 2001 submission, mailed a NOTICE OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 indicating the 35 U.S.C. 371(c) date as 18 July 2001.

On 18 December 2002, applicants submitted a "PETITION UNDER 37 CFR 1.181 FOR CORRECTED NOTICE OF ACCEPTANCE" requesting that the 35 U.S.C. 371(c) date be changed to 30 October 2000. This petition was accompanied by a copy of a date-stamped postcard receipt.

On 02 June 2003, the USPTO mailed a decision dismissing applicants' petition under 37 CFR 1.181 filed 18 December 2002. Specifically, it was noted that a review of the application file revealed that a declaration filed 30 October 2000 was not located therein and that applicant failed to provide a true copy of the declaration purportedly filed 30 October 2000. The decision also indicated that the NOTICE OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 mailed 26 December 2001 was VACATED.

On 28 July 2003, applicants submitted the instant "RENEWED PETITION UNDER 37 CFR 1.181 AND CONDITIONAL PETITION FOR UNINTENTIONAL ABANDONMENT UNDER 37 CFR 1.137(b)", which was accompanied by a copy of an executed declaration of inventors purportedly filed 30 October 2000.

On 14 August 2003, the DO/EO/US mailed a NOTIFICATION OF ABANDONMENT UNDER 37 CFR 1.53(f) OR (g) indicating that the application was abandoned for failure to timely or properly reply to the NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 mailed 04 December 2000 and that the reply received on 18 July 2001 was untimely.

DISCUSSION

A review of the application file reveals that a declaration filed on 30 October 2000 is not located therein.

However, applicants have provided sufficient evidence to establish that on 30 October 2000 applicants filed the declaration of inventors. The proof is in the form of the copy of the receipt (filed 27 June 2001) for the above-identified application which bears a United States Patent and Trademark Office (USPTO) date stamp of 30 October 2000 and which itemizes the declaration and identifies the above-captioned docket number, international application number and title. Further, practitioner states that the copy of the declaration filed 28 July 2003 is a true copy of the declaration originally filed 30 October 2000 (petition filed 28 July 2003). Therefore,

in view of the date-stamped receipt and practitioner's statement, the declaration received on 28 July 2003 may properly be accepted as originally received in the USPTO on 30 October 2000. Accordingly, the NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 mailed 04 December 2000 and the "NOTIFICATION OF ABANDONMENT UNDER 37 CFR 1.53(f) OR (g)" mailed 14 August 2003 are hereby VACATED.

Because the NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 mailed 04 December 2000 has been vacated, the application is no longer abandoned for failure to reply to that Notice. Consequently, there is no need to address applicants' conditional petition under 37 CFR 1.137(b).

The declaration of inventors filed 30 October 2000 is in compliance with 37 CFR 1.497(a)-(b).

CONCLUSION

For the reasons set forth above, applicants' petition under 37 CFR 1.181 is **GRANTED**.

For the reasons set forth above, the NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 mailed 04 December 2000 and the NOTIFICATION OF ABANDONMENT UNDER 37 CFR 1.53(f) OR (g) mailed 14 August 2003 are hereby **VACATED**.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application including according the application a 35 U.S.C. 371(c) date of **30 October 2000**.



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